UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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DENNIS COOK, :

Plaintiff, :

vs. :CASE NO. C-1-02-073

CITY OF NORWOOD, et al., :

Defendants. :

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Deposition of MERRITT S. OLESKI, Ph.D., a witness herein, taken by the defendants as upon cross-examination, pursuant to the Federal Rules of Civil Procedure and pursuant to Notice to Take Deposition as to the time and place and stipulations hereinafter set forth, at 11590 Century Boulevard, Suite 112, Sharonville, Ohio, at 10:00 A.M. on Thursday, March 27, 2003, before Darlene Anthony, RPR, a Registered Professional Reporter and Notary Public within and for the State of Ohio.

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ORIGINAL

APPEARANCES:

On behalf of the Plaintiff:

ROBERT KELLY, ESQ.
Attorney at Law
4353 Montgomery Road
Cincinnati, Ohio 45212

On behalf of the Defendant, City of Norwood:

ROBERT HILLER, ESQ.
of
Schroeder, Maundrell, Barbiere & Powers
Governor's Knoll, Suite 110
11935 Mason Road
Cincinnati, Ohio 45249

On behalf of the Defendant, Gary Hubbard:

STEVEN C. MARTIN, ESQ.
of
Ziegler & Schneider, P.S.C.
541 Buttermilk Pike, Suite 500
P.O. Box 175710
Covington, Kentucky 41017-5710

On behalf of the Defendant, Kevin Cross:

JEFFREY A. WILLIS, ESQ.
of
Lindhorst & Dreidame Co., LPA
312 Walnut Street
Suite 2300
Cincinnati, Ohio 45202-4091

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S T I P U L A T I O N S

It is stipulated by counsel for the respective parties that the deposition of MERRITT S. OLESKI, Ph.D., a witness herein, may be taken at this time by the defendants as upon cross-examination and pursuant to the Federal Rules of Civil Procedure, all other legal formalities being waived by agreement; that the deposition may be taken in stenotypy by the Notary Public-Court Reporter and transcribed by her out of the presence of the witness; that the transcribed deposition was submitted to the witness for examination and signature and that signature may be affixed out of the presence of the Notary Public-Court Reporter.

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MERRITT S. OLESKI, Ph.D.

of lawful age, a witness herein, being first duly sworn, as hereinafter certified, was examined and deposed as follows:

CROSS-EXAMINATION

BY MR. HILLER:

Q. Would you state your name?

A. Merritt S. Oleski.

Q. My name is Robert Hiller, and along with Larry Barbiere we represent the City of Norwood in this case. Could you state your business address?

A. I have several but the one we're at now will more than suffice. It's 11590 Century Boulevard, Springdale, Ohio 45246.

Q. You are a psychologist?

A. Yes, I am. Neuropsychologist and clinical psychologist.

Q. Could you explain what your educational background is?

A. Sure. I have a Ph.D. from Vanderbilt University in psychology.

Q. And where did you go to school, undergraduate?

A. University of Massachusetts.

Q. And what year did you graduate?
A. 1975.
Q. And what was your major?
A. I had two majors, philosophy and psychology.
Q. Did you also get a Masters?
A. Master degree from University of Dayton in 1978.
Q. And what was that in?
A. Clinical psychology.
Q. You may have already said this but what is your Ph.D. in from Vanderbilt?
A. It's in psychology, and the two areas within psychology are clinical psychology and neuropsychology. You designate areas.
Q. And what year did you get your Ph.D.?
A. 1982.
Q. And briefly, could you tell us what your professional career has been since you got your Ph.D.?
A. Did an internship at Ohio State in neuropsychology, health psychology and pain management. Worked at St. Elizabeth Medical Center in Dayton for approximately two years --

something like '83 through '84. The end of '82 through '84 there. And I was a psychologist doing those three things, neuropsychology, clinical psychology and pain management.

Then I came down to the University of Cincinnati as an assistant professor with the School of Medicine, and I was in the Department of Neurology attached to the Division of Physical Medicine and Rehabilitation, acronym PM&R, and I was there maybe about a year, year and-a-half. And I did the same kind of thing, the clinical psychology, neuropsychology and pain management.

Then I went over to Jewish Hospital approximately the end of 1984, beginning of 1985. I overlapped, actually. Then I was there until the hospital closed at the end of 1997, and I did two basic things, I was the head of psychology on rehab, that's PMR again, and from '95 through '97 I ran -- I was the director of the pain program over there. I had an outpatient practice at the same time. And that's it, in essence.

Q. Is there a license that one in

your field needs to practice?

A. Yes, there is.

Q. And where are you licensed?

A. State of Ohio.

Q. And what is your license in?

A. Psychology.

Q. When did you become licensed in Ohio?

A. 1982 or '3. Call it '83.

Q. And you're presently licensed in Ohio?

A. Yes, I am.

Q. What is your present practice?

A. I do BWC disability determinations. I assume that's part of the reason I'm here. I do neuropsychology and I do the chronic pain management.

Q. How long have you done disability determinations for the Bureau of Workers' Compensation, approximately?

A. Four years, four and a half years. I'd say around four and a half years, something like that. I may have done some earlier in the '90s and '80s under a different basis, but I recertified back around '96 or '7, somewhere

around there, and I've been doing them since then. Do several a week.

Q. In general terms, when you do a disability determination for BWC, you would get your assignment directly from the Bureau?

A. They send me a schedule with one, two, three names on it, and they send me medical files, psychology files, and I review those and see the person.

Q. And then write a report?

A. Yes, I do.

Q. In this case I believe you saw Dennis Cook, who is the plaintiff in this case?

A. Yes, I did.

Q. And when was it that you saw him?

A. Apparently -- I say apparently because I'm just going from the date here, October 24th, the year 2000.

Q. And just to make sure it's clear, he was sent to you for evaluation by the Bureau of Workers' Compensation?

A. That is correct.

Q. He wasn't sent by the City of Norwood or his own attorney?

A. No, not that I'm aware of at all.

No, he was sent by the Bureau.

Q. And I believe you are looking at a copy of your report?

A. Yes, I am.

Q. I'm going to hand you another copy that I've marked as Defendant's Exhibit 1, and could you briefly tell me that that is?

A. This is an IME, Independent Medical Evaluation, addressing requested claim allowance in this case -- two claim allowances. Do you want me to go in this in any kind of detail?

Q. Not in that much detail. Essentially, that would be --

A. This is my evaluation.

Q. This is a copy of the letter with your evaluation of Mr. Cook that you sent back to the Bureau of Workers' Compensation?

A. Yes, it is.

Q. And what is it dated?

A. I don't see the date on here. Oh, there is a date when the Bureau stamped it, and I can use that date I guess.

Q. Do you know, in your normal practice, given the date of examination --

A. This would have been turned around within a week or so.

Q. Within a week?

A. Actually, back then I was turning this around even faster, so probably within three days, literally.

Q. And would you say that that's a fair and accurate copy of the report that you sent to BWC?

A. It does look like that, yes.

Q. When Mr. Cook came into your office, I assume you spoke with him?

A. Yes, I did.

Q. And had an opportunity to observe him?

A. Yes, I did.

Q. What of significance did he tell you?

A. Well, really reading from the report, I need to do that -- can I quote from my own report here?

Q. Sure.

A. I always ask people about their job, to explain in their own words, and I always like to have direct quotes to get the

flavor across. And I quote that he "Still has thoughts of going to City Hall and blowing their brains out. Still have suicidal thoughts." Then he went on to describe that he was in distress. A lot of distress, emotionally.

Q. What observations did you make of him?

A. I made the observation that he was in distress. I'm going to flip over to -- okay. He presented with a very tense demeanor, wandered off course, attention span and concentration were impaired mostly by the press of what he was feeling inside. I do remember saying back here, under opinion number six on the last page, I noted that he's clearly a distressed individual, and he was one of the most distressed individuals I've seen in this process, which is why I made -- I took the opportunity to make this note. Instead of just saying, you know, not applicable, I did a little commentary because I was struck by the fact that he was clearly in need of some kind of treatment.

And so I'm going to just read what

I wrote here. "This IW," which is injured worker, "is clearly a distressed individual as noted in the comments above. He presented a medication list which included lithium carbonate. The IW also reported that he sees a psychiatrist (one time a month) and a therapist (two times a month) as part of the management of his psychological condition. This gentleman appears to be a fragile personality, fighting hard to maintain some sense of normalcy in his life. Hopefully the IW will follow through with his treatment plan for this serious psychological condition."

Q. Just to make sure it's clear, you only saw Mr. Cook on one occasion?

A. This is true.

Q. And it was not to treat him?

A. Strictly to evaluate.

Q. Were you able to formulate an opinion concerning Mr. Cook's condition?

A. Yes. And as noted here in the comments I just read, the lithium carbonate is a big tip off. That's the medication -- the original medication, I should say, not the only one, the original medication used to treat

bipolar disorder, and indeed he was presenting with a lot of the cardinal characteristics of a bipolar disorder.

Q. Let me ask you, Doctor. Based upon your education and experience and training and the history that you took from Mr. Cook, the conversation that you had with him and your observations, were you able to formulate an opinion as to his diagnosis to a reasonable degree of medical or psychological probability?

A. Yes.

Q. And what was your opinion?

A. My opinion was that he was bipolar affective disorder at a severe level.

Q. And in more laymen's terms, what is that?

A. Bipolar disorder is a disorder in which a person may, but not necessarily, has to experience both ends of a continuum of being what is commonly referred to as manic and then the other end of the continuum which would be a depression, which can be vegitative in nature, which you are literally closed down. In fact, it can play out in more subtle ways but I think for purposes of evaluation, think of it as a

continuum, and that the person can go to either end of the continuum. And some bipolar are only at the depressive end and never experience the manic end, and vice versa.

Q. Did you formulate an opinion as to whether Mr. Cook was disabled and unable to work as of the time of your evaluation?

A. It would seem to me, based on -- I'm pausing here just for a second because I don't think that was strictly asked of me in the six questions. I want to go back to the report here. Your question is was he psychologically disabled?

Q. Yes.

A. Just by dint of his condition? Just the fact of his condition, regardless of origin or anything else?

Q. Right.

A. I didn't address that directly in the report that I recall. I may have, and I'm looking here, but looking over the report, I would say that he would have a very difficult time in a normal work setting, just because of problems with attention and concentration. Also the emotional stability, depending on

where his treatment was right then, and how successful he was responding to the medication would also be a big variable, directly affecting his ability to make it through a task that was assigned to him.

Q. Did you have information either from the materials that were provided to you or from the conversation you had with Mr. Cook as to what his particular job was?

A. I believe, from looking over one of the prior files, he was a street sweeper. Yes, that's what I wrote. I summarized the psych files provided to me, and I'm reading it right here.

Q. The bipolar disorder that you diagnosed --

(A brief interruption was had.)

(A brief recess was had.)

(The record was read by the court reporter.)

Q. We got a cell phone call and took a break. I'm going to strike the beginning of the last question and ask it again. The bipolar disorder that you diagnosed, do you have an opinion, again based upon your training

and experience and education, as to the origin of that condition?

A. Yes. Bipolar disorder is a biological condition and we believe genetically based. In other words, you're pre-programmed for it. That's it in essence.

Q. So that would be your opinion with respect to Mr. Cook as well?

A. Yes, it would be.

Q. If I understand your testimony then, it is your opinion that Mr. Cook's bipolar disorder was not caused by his employment?

MR. KELLY: Objection.

A. Do I answer?

Q. Yes.

A. That would be true, the bipolar disorder was not caused by the incident.

Q. And let me ask this same question again. These questions are to be answered to a reasonable degree of psychological probability based upon your education and training and experience. How about aggravation from work? Would there be any aggravation of the bipolar disorder?

A. That is possible. You can have an exacerbation or an aggravation of a preexisting condition. To determine that, you really need a baseline, which particularly in this kind of a circumstance, is sometimes hard to piece together just from the information provided by the injured worker.

Q. So you say that it's possible but it's not your opinion that it's probable?

MR. KELLY: Objection.

A. I would have to take that on a case by case basis. That would be -- anything can be exacerbated or aggravated; almost anything. It's just a question of then whether that's clinically significant or whether that's falling in a category of yes, it occured, but it's not significantly changed the person in their life with regard to their diagnosis.

Q. Doctor, looking at the third page of the exhibit, which is your report back to the BWC, number five, you were, I believe, asked about aggravation.

A. Uh-huh.

Q. Do you recall why you put "not applicable"?

A. Whenever I put that, it's because to the best of my ability to determine in the interview setting, I can't determine or can't make the case for that, that's what occurred. That there was an aggravation of something preexisting. Because that implies I would know the prior level and now this level represents something clinically significant above that, based on the prior level.

MR. HILLER: Doctor, I don't have any other questions. Thank you very much.

MR. MARTIN: I don't have any questions. I'll pass the witness to whoever is next.

MR. WILLIS: I have no questions.

CROSS-EXAMINATION

BY MR. KELLY:

Q. Dr. Oleski, I just wanted to ask you a couple questions. You stated that you would need a baseline --

A. Yes.

Q. -- to determine if his condition was exacerbated?

A. Uh-huh, yes.

Q. What factors would exacerbate a

bipolar condition in a patient?

A. I'm pausing here for a minute because this is a real hair splitter for me from a diagnostical standpoint. The reason being, you're talking about a condition that is biologically based and which can be pretty extreme in terms of forward expression of behavior. People can do very dramatic things, can present in a very histrionic manner, and it would take something major enough that you could take what might potentially be -- I can't say that he could potentially be already an elevated level and push that even higher to some other level that would be deemed clinically significant, and now we're getting pretty subjective. Unless I say, well, the person was controlled, or at least functional, until they get to the point where they had an exacerbation, and so whatever their background symptomatology was -- for example, some people experience a lot of sleeplessness, some people are very irritable with this, some people are just very eratic in their behavior, but then it went to a new level where, for example, the person was not functional. They were driving